

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:13-cv-00569-MOC-DSC

VIVA HEALTHCARE PACKAGING USA INC,)
VIVA HEALTHCARE PACKAGING HK LTD,)
and VIVA HEALTHCARE PACKAGING LTD,)

Plaintiffs,)

Vs.)

ORDER

CTL PACKAGING USA INC and TUBOPLAST)
HISPANIA,)

Defendants.)

THIS MATTER is before the court upon submissions by the parties regarding a discovery dispute related to the length and scope of the deposition of Cynthia Smith (##305, 306). At a hearing before the court on twelve (12) pending motions on May 4, 2016, this court ordered the parties to agree to additional discovery regarding the manufacture of injection molded articles undertaken by Defendants for subsequent testing by Defendants' expert witness. At that time, the court instructed the parties to attempt to come to a resolution as to what documents would be produced, as well as who would be deposed, on what topics, and for how long. The court specifically indicated that it would not permit a "fishing expedition." See Tr. (#304) at 191:7-19.

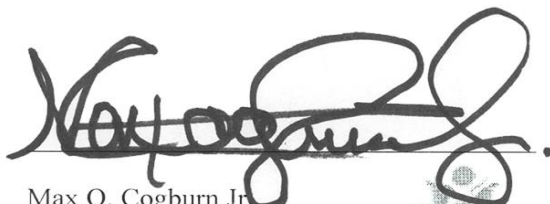
As indicated by the parties' filings, Defendant CTL Packaging has agreed to provide all non-privileged documents related to the testing in question and to make available a corporate representative of Tuboplast under Fed. R. Civ. P. 30(b)(6) for a deposition about the manufacturing of samples at issue. Defendants also have agreed to make Ms. Smith available for

a deposition. The parties have informed the court that the 30(b)(6) deposition will take place on May 23, 2016 for 3.5 hours and that Ms. Smith's deposition is to occur at least one week later. The parties dispute the scope and length of Ms. Smith's deposition. Plaintiffs request a full deposition of Ms. Smith regarding the opinions in her expert reports; Defendants request that her deposition not exceed two (2) hours and that it be limited to her reliance on how the injection molded articles were made and tested.

Having considered the arguments of both parties and reviewed the transcript of the May 4 hearing, the court agrees with Defendants that the deposition of Ms. Smith should be limited to the topic about which Plaintiffs sought additional discovery and should not encompass the full scope of Ms. Smith's opinions. Thus, the deposition should be limited to the topic of how the injection molded articles were made and tested, which would include questions about Tuboplast's sample tube production that arise out of the newly produced documents and/or testimony from Tuboplast's 30(b)(6) representative.

IT IS THEREFORE ORDERED THAT: Defendants are to make available their expert, Cynthia Smith, for a deposition not to exceed **three (3)** hours at a date, time, and place agreed to by the parties, for questions regarding her reliance on how the injection molded articles in question were made and tested.

Signed: May 20, 2016



Max O. Cogburn Jr.
United States District Judge